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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,867	02/11/2004	Roger P. Hansen	04946.84020	3899

24335 7590 08/02/2005

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EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/776,867

Applicant(s)

HANSEN, ROGER P.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/11/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 3, "said first side" lacks clear antecedent basis for one such side, as "having first and second sides" fails to distinguish one of each. See also "second side" in lines 4 and 5. In line 5, "said cut-out" is inconsistent with the preceding "at least one cut-out".

In claim 3, line 2, "said portion" is indefinite, as different "portions" have been defined in line 2 and claim 1, line 5.

In claim 4, lines 1 and 2, "said (flexible) spine" is inconsistent with claim 2, lines 1-2. See also claim 5, line 3 (twice), claim 7, lines 1 and 2 and claim 11, line 2.

In claim 12, line 7, "said paperboard" lacks antecedent basis as a noun.

In claim 14, line 1, "one or more" is alternative and indefinite and should be --at least one cut-out--. In lines 2-3, "said cut-out" is inconsistent with either terminology. In line 3, "said article" lacks antecedent for a particular article, as "for holding an article" does not define an article per se. See also claim 21, line 2 and claim 24, lines 1, 2-3 and 3 (twice) for the same problems.

In claim 16, line 2, "relative said cover" is ungrammatical and indefinite.

In claim 20, line 1, "one or more" is alternative and indefinite and should be --at least one recess--. In line 2, "said recesses" is inconsistent with either terminology. See also claim 21, line 1.

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In claim 21, line 2, "said recess" is inconsistent with either of applicant's previous recitations.

In claim 22, line 5, "said flexible spine" and line 6, "said spine" are each inconsistent with line 3.

In claim 30, line 4, "said tray not extending completely to said wall" is indefinite, as the tray has the flange, the flange forms a peripheral wall, ergo the tray does extend to the peripheral wall. In lines 5-6, "said recess" is inconsistent with lines 4-5.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Derraugh et al. (5,769,217). Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Begim (2004/0163990). Each discloses a composite package comprising a transparent polymeric tray (20A; 17-19 and at 21; respectively) having a first side and a second side, the first side including a plurality of article holding means (30A, 36A, 38A; 8, 12, 37, 2) and a paperboard cover (12A-14A-16A; 9) attached to the second side of

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the polymeric tray, the cover defining at least one cut-out (22A; 5 and 7) exposing a portion of the second side of the tray to expose an article contained in the polymeric tray.

As to claim 2, each discloses the tray having a spine section (82; 43 and 45 and therebetween).

As to claim 3, Derraugh et al. disclose the spine section not extending to the peripheral edge.

5. Claims 12 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgschweiger (4,724,957). Claims 12, 22-24 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Derraugh et al.. Each discloses a package comprising a paperboard cover (2; 12A-14A-16A) having a peripheral edge, a thermoformable polymeric tray (10-11; 20A) including a first side, a second side and a spine (9; 82), the first side including article holding means (shown recesses; 30A, 36A and 38A), the second side attached to the paperboard cover, the spine allowing the package to close like a book and not extending to the peripheral edge of the paperboard cover.

As to claim 22, Derraugh et al. disclose conventional adhesive (see column 5, 58 through column 6, line 2) that is not applied to the spine so the spine may buckle (fold) when the package is closed.

As to claim 24, Derraugh et al. disclose a cut-out (22A).

As to claim 30, each discloses the cover defining at least one void (between 9 and 3; 22A).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Begim in view of Burgschweiger. Begim has been explained above. Burgschweiger discloses the spine allowing the package to close like a book and not extending to the peripheral edge of the paperboard cover. To modify the spine of Begim in the arrangement of Burgschweiger would have been an obvious matter of degree, the extent of the spine being less being obvious in order to save on material.

8. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Burgschweiger and Begim in view of Elliott et al. (3,487,919).

Burgschweiger and Begim each disclose a package comprising a paperboard cover (2; 9), a polymeric tray (10-11; 17, 19 and at 21) having a spine (9; 43, 45 and therebetween), a first side of the tray including article holding means (inside 10 and 11; 8, 12, 37) and a second side attached to the paperboard cover. Elliott et al. disclose joining a polymeric tray to a paperboard cover by a conventional adhesive (13) not

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applied to the spine area of the tray between portions of the tray. To modify either one of Burgschweiger and Begim employing the adhesive teaching of Elliott et al. would have been obvious in order to secure the tray to the cover, yet allowing movement of the spine of the package by not adhesively joining the spine to the cover, as suggested by Burgschweiger and Elliott et al..

As to claim 24, Begim discloses cut-outs (at 5 and 7).

9. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgschweiger and Elliott et al. as applied to claim 23 above, and further in view of either one of Derraugh et al. and Begim. Derraugh et al. and Begim each disclose cut-outs (22A; at 5 and 7) employed with transparent polymeric trays. To modify Burgschweiger further employing the cut-out and transparent polymeric tray teaching of either one of Derraugh et al. and Begim would have been obvious in order to allow viewing of the package contents from outside of the cover, as suggested by either one of Derraugh et al. and Begim.

10. Claims 4-9, 13-21 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 3, 12 and 24 above, and further in view of either one of Barnhart (4,240,544) and Kallenbach (4,901,884). Barnhart and Kallenbach each disclose a flexible spine (17; 13) provided with notches (39; 17) to facilitate the closing of the package. To further modify the structure previously employed employing the opposing notch teaching of either one of Barnhart and Kallenbach would

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have been obvious in order to facilitate the closing of the package, as taught by either one of Barnhart and Kallenbach.

As to claims 5-6, 9, 15, 19 and 26, Derraugh et al. disclose the cover adhered to the tray by conventional adhesive disposed between the flange (26A) and the peripheral edge of the cover, the choice of adhesive being a matter of choice and degree.

As to claim 7, Derraugh et al. disclose a pair of hinges on either side of 14A.

As to claims 8, 18 and 27, Derraugh et al. disclose the cover as part of a book, indicating that printed graphics would have been obvious in order to identify the contents of the cover, and official notice is taken of this.

As to claim 14, Derraugh et al. disclose a cut-out (22A) in the cover.

As to claim 16, Derraugh et al. disclose the spine of the polymeric tray may buckle (fold) when the package is closed.

As to claim 17, Derraugh et al. disclose a means (at 38A and 54A) for latching.

As to claims 20 and 21, Derraugh et al. disclose a recess (30A) in the first side of the tray, including a cut-out (46).

As to claims 26 and 28, the combinations of Begim with Elliott et al. and Burgschweiger with Elliott et al. and one of Derraugh et al. and Begim disclose the cover adhered to the tray by conventional adhesive disposed between the flange (26A) and the peripheral edge of the cover (Elliott et al.), the choice of adhesive being a matter of choice and degree.

As to claim 27, Begim discloses printable graphics on the cover.



As to claim 29, Derraugh et al., Burgschweiger and Begim each disclose a recess in the first side of the tray.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgschweiger as applied to claim 13 above, and further in view of either one of Derraugh et al. and Begim. Derraugh et al. and Begim each disclose cut-outs (22A; at 5 and 7) employed with transparent polymeric trays. To modify Burgschweiger further employing the cut-out and transparent polymeric tray teaching of either one of Derraugh et al. and Begim would have been obvious in order to allow viewing of the package contents from outside of the cover, as suggested by either one of Derraugh et al. and Begim.

12. Claims 5-11 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 4 including Begim and claim 14 including Burgschweiger above, and further in view of Elliott et al.. As to claims 5-6, 9, 15 and 19, Elliott et al. disclose the cover adhered to the tray by conventional adhesive disposed between the tray and the cover, the choice of adhesive being a matter of choice and degree.

As to claim 7, Burgschweiger and Begim each disclose a pair of hinges between portions of the tray.

As to claims 8, 18 and 27, Begim discloses the cover as part of a book, indicating that printed graphics would have been obvious in order to identify the contents of the cover, and official notice is taken of this.

As to claim 16, Burgschweiger and Begim disclose the spine of the polymeric tray may buckle (fold) when the package is closed.

As to claim 17, Burgschweiger and Begim each disclose frictional means for latching.

As to claims 20 and 21, Burgschweiger and Begim each disclose a recess in the first side of the tray, with Begim including a cut-out (41).

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are similar book-like packages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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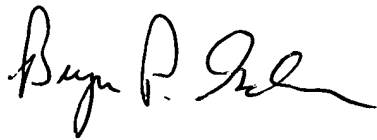
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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bryon P. Gehman  
Primary Examiner  
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BPG